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INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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Attention:

Dear _____ :

This letter responds to your request for assistance dated August 07, 2015, on the question whether a "gun trust" created under Florida law as a noncharitable purpose trust, purportedly without ascertainable beneficiaries, pursuant to the Noncharitable Trust for Property NFA Sample Trust ("Sample Trust") agreement you provided to us would be classified as a trust for federal tax purposes under Treas. Reg. § 301.7701-4. For the reasons discussed below, we believe that such a gun trust would be a trust under § 301.7701-4.

Under the Sample Trust agreement, the grantor may add or remove property from the trust at any time. The grantor may also appoint and remove trustees in his discretion. Under the agreement, the powers and decision making authority of the grantor supersedes the authority of all other trustees and the grantor holds veto power over all other trustees. The trustees have a duty to ensure that the trust property is maintained in serviceable and useful condition, to maintain the trust property's reasonable economic value, and to ensure all laws relating to the trust property are followed. The Sample Trust agreement states that there are no ascertainable beneficiaries identified in the trust agreement.

Treas. Reg. § 301.7701-4(a) defines a "trust" as an arrangement created either by a will or by an inter vivos declaration whereby trustees take title to property for the purpose of protecting or conserving it for the beneficiaries under the ordinary rules applied in chancery or probate courts. The fact that a person is not identified in the trust

agreement as a beneficiary does not necessarily mean that person is not a beneficiary for either property law or federal tax purposes. Black's Law Dictionary (9th ed., 2009) defines "beneficiary," in relevant part, as (1) someone who is designated to receive the advantages from an action or change; esp., one designated to benefit from an appointment, disposition, or assignment (as in a will, insurance policy, etc.), or to receive something as a result of a legal arrangement or instrument; (2) a person to whom another is in a fiduciary relation, whether the relation is one of agency, guardianship, or trust; esp., a person for whose benefit property is held in trust; or (3) someone who is initially entitled to enforce a promise, whether that person is the promisee or a third party. The definition of "beneficiary" in § 643(c) of the Internal Revenue Code states that it includes heirs, legatees and devisees, which would mean persons receiving property under a will or by intestate succession. However, it does not limit beneficiaries to that class. As the Tax Court has stated, "[t]his definition is intentionally broad and should not be narrowly construed." Cameron v. Commissioner, 68 T.C. 744, 747-48 (1977). Section 1.643(c)-1 also provides a non-exclusive list of persons who will be treated as beneficiaries in addition to heirs, legatees, and devisees.

Under the Sample Trust agreement, the grantor may use the Sample Trust property, presumably firearms covered by the National Firearms Act (NFA), although the Sample Trust is not limited to holding only such firearms. The grantor has the power to transfer property in and out of the trust, revoke the trust, and override or remove the additional trustees. The trustees have a fiduciary duty to protect and conserve the trust property, with the grantor benefiting from those efforts insofar as the grantor may withdraw the trust property for the grantor's own use. In the event the trustees do not perform this duty, they may be sued under Florida law.

Based upon these facts, the grantor would qualify as a beneficiary. If the other trustees were permitted under the terms of the trust or applicable state law to use the trust property for personal enjoyment, they would also be considered beneficiaries, although such a right to enjoyment does not appear on the face of the Sample Trust instrument. Because the trustees under the Sample Trust would take title to the firearms to protect and conserve them for the beneficiaries and those rights and obligations may be enforced in the appropriate local courts, the trust meets the definition of a trust under § 301.7701-4.

We note that the Sample Trust is a grantor trust under § 671 because of the grantor's powers to revoke the trust and otherwise control its administration, and the grantor's rights to the beneficial enjoyment of the trust property. This requires the grantor to report any items of trust income, loss, deduction, or credit on the grantor's individual income tax return and would generally cause the grantor to be treated as the owner of the trust assets for federal income tax purposes. See Revenue Ruling 85-13, 1985-1 C.B. 184. However, a grantor's ownership of the trust assets for income tax purposes, that is, for purposes of Chapter 1 of the Code, does not necessarily mean that the grantor is treated as the direct owner of those assets under any other chapter, including

Chapter 53 dealing with NFA firearms. A grantor trust is still a trust under § 301.7701-4 and may be respected as a trust for other purposes of the Code. For example, a grantor trust is subject to a return filing regime separate from that of its owner, and may be respected as an entity separate from its owner for estate and gift tax purposes, depending on the particular power causing it to be a grantor trust. There is no published authority disregarding a grantor trust as separate from its owner under Chapter 53.

For the reasons stated above, we conclude that the Sample Trust qualifies as a trust under § 301.7701-4. Even if we did not consider the Sample Trust as having beneficiaries within the meaning of § 643(c), we would likely still classify it as a trust under § 301.7701-4 under the principles applied in two revenue rulings. In each of Rev. Rul. 58-190, 1958-1 C.B. 15, and Rev. Rul. 76-486, 1976-2 C.B. 192, the Service considered the income tax consequences of a nongrantor purpose trust without beneficiaries. Rev. Rul. 58-190 addressed the situation in which a trust was set up for the care of a family burial plot. Rev. Rul. 76-486 addressed the situation in which a trust was set up for the care of a pet. The rulings hold that, even though the trusts lacked beneficiaries, if the trusts were valid under state law, they would still be recognized as trusts for federal tax purposes and thus taxable under § 641.

Our analysis of whether this noncharitable purpose trust qualifies as a trust for purposes of § 301.7701-4 is based solely on the provisions of the Sample Trust agreement. An actual trust with different provisions might lead to a different conclusion. Our analysis also assumes that the Sample Trust will be administered strictly in accordance with its terms. In this connection, we note that the federal tax treatment of an entity depends on all of the facts and circumstances, including the conduct of the parties.

If you have any additional questions about this matter, please contact our office at

Sincerely,

Holly Porter
Chief, Branch 3
(Passthroughs & Special Industries)